

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DENNIS KOESTERER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER, DAVID C.
SCHNEIDER and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-9801-CM

ECF FILED

(Captions continued on subsequent page)

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE MOTION OF
ONTARIO TEACHERS' PENSION PLAN BOARD FOR APPOINTMENT AS
LEAD PLAINTIFF AND IN OPPOSITION TO ALL OTHER MOTIONS**

JOEL ABRAMS and BRIAN ROFFE,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER , STEPHEN J.
ROTELLA and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-9806-AKH

ROBERT L. GARBER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER , STEPHEN J.
ROTELLA and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-11422-UA

Ontario Teachers Pension Plan Board (“Ontario Teachers”) respectfully submits that it should be appointed Lead Plaintiff. The Private Securities Litigation Reform Act of 1995 (“PSLRA”) requires the Court to appoint as Lead Plaintiff the movant with the “largest financial interest in the relief sought by the class” that “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See* 15 U.S.C. § 78u-4(a)(3)(B); *see also Glauser v. EVCI Career Colleges Holding Corp.*, 236 F.R.D. 184, 187 (S.D.N.Y. 2006). Ontario Teachers clearly satisfies these requirements and should be appointed Lead Plaintiff.

Ontario Teachers suffered approximate losses of \$24 million in connection with its investment in the stock of Washington Mutual, Inc. (“WaMu”)—a significantly larger financial interest than any other movant herein.¹ Ontario Teachers is, in addition, a sophisticated and experienced institutional investor, and is, therefore, “precisely the type of sophisticated institutional investor that Congress and this Court have recognized as being ideally suited to control this type of securities class action litigation.” *EVCI Career Colleges Holding Corp.*, 236 F.R.D. at 188. Ontario Teachers is, therefore, the “most adequate plaintiff” under the PSLRA and respectfully submits that it should be appointed Lead Plaintiff and its motion should otherwise be granted. 15 U.S.C. § 78u-4(a)(3)(B).

Other movants herein recognize that Ontario Teachers financial interest is the largest and that Ontario Teachers satisfies the relevant requirements of Rule 23 as an adequate class representative with typical claims. For example, the NYC Police and Fire Pension Funds have withdrawn their motion, stating that “it appears that the Ontario

¹ The other movants and their claimed losses on a first in, first out (“FIFO”) basis are: The New York City Police and Fire Pension Funds, asserting losses of \$15,173,101; the WaMu Institutional Investor Group, asserting losses of \$14,793,906; the Massachusetts Pension Reserves Investment Management Board, asserting losses of \$7,035,421; and Mr. Burton Rosenfield, asserting losses of \$44,810.

Teachers Pension Plan Board has the largest financial interest in the relief sought by the class, 15. U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb), and otherwise satisfies the criteria for appointment as Lead Plaintiff.” Notice of Withdrawal of Motion for Appointment of Lead Plaintiff and Approval of Lead Counsel, at 2 (Dkt. 34.). Similarly, the WaMu Institutional Investor Group and Burton Rosenfield have all withdrawn their motions for appointment as Lead Plaintiff in deference to Ontario Teachers. *See* Notice of Withdrawal of Motion of WaMu Institutional Investor Group, at 1 (Dkt. 29.); Notice of Withdrawal of Burton Rosenfield’s Motion for Lead Plaintiff, at 1 (Dkt. 32.).

Accordingly, Ontario Teachers respectfully requests that the Court appoint it as Lead Plaintiff, approve its selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the Class, and consolidate all related actions.

Dated: January 22, 2008

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

/s/ Gerald H. Silk

Gerald H. Silk (GS-4565)

Noam Mandel (NM-0203)

1285 Avenue of the Americas, 38th Floor

New York, NY 10019

(212) 554-1400

*Counsel for Ontario Teachers’ Pension Plan
Board and Proposed Lead Counsel for the
Class*